IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANCHALBEN MAALAAJIBHAI ADODIYA

Versus

RAJAKUMAR

Appearance:

MR FM BATUNGE for Petitioner

Mr.D.N.Patel, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu by an order dated 26.7.1999 at Annexure A made by the District Magistrate, Bhavnagar respondent no.1 herein, under the provisions contained in the Gujarat Prevention of Anti-social activities Act, 1985 ("PASA" for short) was detained. The grounds of the detention order were served on detenu vide Annexure C

dated 26.7.1999.

2. The detenu was booked for 11 offences on different dates from 7.7.1998 to 10.7.1999 for offences punishable under the provisions contained in the Bombay Prohibition Act. The Detaining Authority was satisfied that the detenu is a boot legger and on account of indulging in illicit liquor, people of the society have been adversely affected. On account of threats administered by the detenu, the Detaining Authority has relied on statements of various persons and the Detaining Authority was satisfied that the detenu is a boot legger & her associates are causing alarm in the society. It is not safe for the innocent persons to reside there and for passers by many times it was very difficult to cross the area peacefully and on account of the threats, even complaints were not filed. The Court is not required to examine the legality of the grounds of detention in the instant case as it is contended before the Court that the representation made by the detenu has not been disposed of in accordance with law. The detenu has taken a specific ground in Para 8 which reads as under:-

> "8. The petitioner has made her representation dated 3.8.1999 to the Detaining Authority and other officers, through the Jail-Authority but the representation has not considered in time. The State Government has the aforesaid representation after great delay without any reason. Thus, the petitioner's fundamental right enshrined under Art. 22(5) of the Constitution of India is violated and the petitioner's continued detention has become illegal".

Though, the Detaining Authority has filed an affidavit in the instant case to justify the detention, however the State has not filed an affidavit indicating that the continued detention is not bad. There are various grounds urged in the petition. The petition is required to be disposed of on the short ground that the representation made by the detenu has not been disposed of in accordance with law. As the State has not filed any affidavit, it is not possible for the Court to come to the conclusion that the representation has been decided in accordance with law. It is under these circumstances that the continued detention is required to be declared as bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no orders as to costs.

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